

EXHIBIT 13-B

**TSEP CONTRACT
FOR EMERGENCY GRANTS**

TREASURE STATE ENDOWMENT PROGRAM

CONTRACT #MT-TSEP-EG_____

FOR _____, MONTANA, _____ PROJECT

This Contract is entered into by _____, Montana, herein referred to as "the Grantee" and the State of Montana Department of Commerce, Helena, Montana, herein referred to as "the Department."

WITNESSETH, that the Grantee and the Department mutually agree as follows:

Section 1. PURPOSE

The purpose of this Contract is to provide funding for project activities described in Section 5 of this Contract to resolve an emergency situation with the Grantee's _____ System.

Section 2. APPLICATION INCORPORATED BY REFERENCE

The information submitted by the Grantee as stated in the Emergency Grant Application Review and Action Taken Form is incorporated into this Contract by reference and the representations made in it are binding upon the Grantee.

Section 3. ACCEPTANCE OF TSEP PROGRAM REQUIREMENTS

- (a) The Grantee will comply with all applicable state laws and regulations and administrative directives and procedures established by the Department.
- (b) The Grantee agrees to repay to the Department any funds advanced to the Grantee under this Contract which the Grantee, its subcontractors or subrecipient entities, or any public or private agent or agency to which the Grantee delegates authority to carry out portions of this Contract, expends in violation of the terms of this Contract or the state statutes and regulations governing the Program.

Section 4. EFFECTIVE DATE AND TIME OF PERFORMANCE

This Contract takes effect when signed by all parties to the Contract and will terminate upon final project closeout by the Department.

Section 5. SCOPE OF WORK

The Grantee will engage in activities as set forth in the Emergency Grant Application Review and Action Taken Form **[and as supplemented with additional information dated ____]** which by this reference **[is] [are]** made a part of this Contract. The major components of the project include: _____. *(Add only if applicable)* The project will be constructed as described in engineering plans and specifications submitted by the Grantee **[and approved by the Montana Department of Environmental Quality]**.

Section 6. BUDGET

The Grantee has estimated that the project will cost \$_____ and will contribute a minimum of \$_____ towards the cost of the project. Additional funding in the amount of \$_____, will be obtained from _____.

Section 7. AMOUNT OF GRANT AND METHOD OF REIMBURSEMENT

- (a) The Department will use funds from the Treasure State Endowment Special Revenue Account as authorized by 17-5-703 and 90-6-701 through 90-6-710, MCA, and appropriated by the 59th Legislature in House Bill 11.
- (b) The Department agrees that it will reimburse the Grantee for successfully completing the activities set forth in Section 5. SCOPE OF WORK, as the Grantee incurs project costs. Upon approving the Grantee's Request for Funds the Department will reimburse all eligible expenses as provided in this Contract. The Department will authorize the Grantee to draw up to \$_____ against the TSEP funding. In drawing against the reserved amount, the Grantee will follow the instructions supplied by the Department.
- (c) If the actual cost of the project is less than the estimate by the Grantee, the Department reserves the right to reduce the amount that will be paid to the Grantee by the same amount.
- (d) The Department will reimburse the Grantee for approved eligible expenses according to the documentation submitted by the Grantee to support the

expenditures. The Department will not reimburse the Grantee for any expenses not clearly and accurately supported by the Grantee's records.

- (e) If the Grantee is unable to comply with the terms and conditions of this Contract, any costs incurred will be the Grantee's sole responsibility.
- (f) If the Department determines that the Grantee has failed to satisfactorily carry out its responsibilities under this Contract, the Department may revoke the Grantee's authority to draw against the reservation described in this Contract until the Department and the Grantee agree on a plan to remedy the deficiency.

Section 8. LIAISON

_____, TSEP Program Specialist, is the Department's liaison with the Grantee regarding all administrative and technical matters arising under this Contract. _____, _____, is the Grantee's liaison with the Department.

Section 9. ACCESS TO RECORDS AND PROJECT MONITORING

- (a) The Grantee will maintain adequate records of its performance under this Contract, in compliance with the Department's administrative requirements and state law, and will allow access to these records at any time during normal business hours by the Department or its agents, and, when required by law, the Montana Legislative Auditor. These records will be kept in the Grantee's offices in _____, Montana.
- (b) The Grantee will retain all of the project related records for three years after the final closeout of the TSEP grant.
- (c) The Department or its agents may monitor and inspect all phases and aspects of the Grantee's performance to determine compliance with the Scope of Work, and other technical and administrative requirements, including the adequacy of records and accounts. The Department may present specific areas of concern regarding these matters to the Grantee, thereby providing the opportunity for the Grantee to propose corrective actions acceptable to the Department.

Section 10. EQUAL EMPLOYMENT OPPORTUNITY

Any hiring of employees by the Grantee under this Contract will be on the basis of merit and qualification, and the Grantee will not discriminate against any person on the basis of race, color, religion, creed, sex, national origin, age, disability, marital status, or political

belief. As used herein, "qualifications" means qualifications that are generally related to competent performance of the particular occupational task.

Section 11. AVOIDANCE OF CONFLICT OF INTEREST

The Grantee will comply with sections 2-2-201, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, (as applicable) regarding the avoidance of conflict of interest.

(Substitute the following for contracts with Tribal governments.) The Grantee agrees that none of its employees, officers or agents will participate in the selection of a contractor to perform work under this Contract or in the award or administration of a contract to be funded under this Contract if a conflict of interest, real or apparent, would arise. A prohibited conflict would arise if:

- (a) The employee, officer, or agent,
- (b) Any member of his or her immediate family,
- (c) His or her partner, or
- (d) An organization that employs, or is about to employ, any of the persons described above,

has a financial or other interest in the firm selected for award.

In addition, the Grantee agrees that none of its officers, employees, or agents will solicit or accept gratuities, favors, or anything of monetary value from contractors, subcontractors, or potential contractors and subcontractors, who provide or propose to provide services relating to the project funded under this Contract.

Section 12. PROPERTY MANAGEMENT AND EQUIPMENT

Title to real property or equipment acquired under a grant or subgrant will vest upon acquisition in the Grantee or subgrantee respectively.

Section 13. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by any contractor or subcontractor in furtherance of this Contract are the property of the Grantee and the Department which have exclusive and unrestricted authority to release, publish or otherwise use, in whole or in part, information relating to these materials. No material produced

in whole or part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the Department and the Grantee.

Section 14. MODIFICATION OF CONTRACT

This Contract may not be enlarged, modified, or altered except upon written agreement, and does not express or imply any continuing commitment by the State of Montana beyond the termination date noted herein. The Grantee accepts responsibility for adherence to the terms of this Contract by subcontractor or subrecipient entities and by public or private agents or agencies to which it delegates authority to carry out portions of this Contract.

Section 15. ASSIGNMENT, TRANSFER AND SUBCONTACTING

The Grantee shall not assign, transfer or subcontract any portion of the Contract without the express written consent of the Department.

Section 16. HOLD HARMLESS AND INDEMNIFICATION

- (a) The Grantee waives any and all claims and recourse against the Department and the State of Montana, including the right of contribution, for loss or damage to persons or property arising from, growing out of, or in any way connected with or incidental to the Grantee's or any subrecipient's performance under this Contract.
- (c) The Grantee agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Grantee's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Grantee and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under the Contract.

Section 17. CONTRACT AMENDMENT

- (a) The Department will consider requests by the Grantee to amend this Contract. However, before the Department will approve an amendment, the Grantee shall clearly demonstrate that the modification is justified and will enhance the overall impact of the original project.

- (b) If it determines that the proposed amendment represents a substantial change in the project activities proposed in the original application for TSEP funds, the Department may, at its discretion, require the Grantee to hold a local public hearing on the amendment after giving reasonable notice of the hearing.
- (c) The Department will not approve significant amendments to the scope of work or budget that would materially alter the intent and circumstances under which the application was originally ranked by the Department and approved by the Governor and the 59th Legislature.
- (d) The Grantee understands that if it makes a significant change in the scope of work or budget that would materially alter the intent and circumstances under which the application was originally ranked by the Department and approved by the Governor and the 59th Legislature, TSEP funding may be suspended until the next session of the Legislature when the proposed change would be presented to the Legislature for its review and approval or disapproval.

Section 18. TERMINATION OF CONTRACT

This Contract may be terminated as follows:

- (a) **Termination Due to Loss of Funding.** The Grantee understands that TSEP funds are provided by mineral taxes and that a decline in revenues produced by these taxes may preclude funding this Contract in whole or in part. If revenues do decline, the parties agree that the Department may terminate this Contract, and, if sufficient TSEP funds are available, compensate the Grantee for eligible services rendered and actual, necessary, and eligible expenses incurred as of the revised termination date. The Department will notify the Grantee of the effective date of a termination or, if a reduction in funding is required, the change in funding and changes in the approved budget.
- (b) **Termination Due to Noncompliance with Contract Terms.** If the Department determines that the Grantee has failed to comply with the general terms and conditions or any special conditions of this Contract or the project schedule, and if upon notification of the defect the Grantee does not remedy the deficiency within a reasonable period of time to be specified in the notice, the Department may terminate this Contract in whole or in part at any time before the date of completion. The Department will promptly notify the Grantee in writing of the decision to terminate, the reasons for the termination, and the effective date of the termination.
- (c) **Termination Due to Adverse Environmental Impact.** This Contract may be terminated if the Grantee or the Department determines that the project would have a significant adverse impact on the quality of the human environment and that this

impact cannot be avoided or sufficiently mitigated by reasonable, cost-effective means.

- (d) **Effect of Termination.** In the event of termination due to the Grantee's failure to comply with the terms of this Contract or the project's adverse environmental impact, any costs incurred will be the responsibility of the Grantee. However, at its discretion, the Department may approve requests by the Grantee for reimbursement of expenses incurred. The Department's decision to authorize payment of any costs incurred or to recover expended TSEP funds will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the Grantee to comply with the terms of this Contract and on whether the failure to comply with the terms of this Contract resulted from circumstances beyond the Grantee's control.

Section 19. COMPLIANCE WITH WORKERS' COMPENSATION ACT

The Grantee accepts responsibility for the adherence to the Montana Workers' Compensation Act by subcontractors or subrecipient entities and shall ensure that all subcontractors or subrecipient entities provide proof of workers' compensation insurance or exemption from the need for such insurance while performing work under this Contract. Neither the Grantee nor its employees are employees of the State.

Section 20. FORCE MAJEURE

Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

Section 21. SEPARABILITY

A declaration by any court, or any other binding legal forum, that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually dependent.

Section 22. INCONSISTENCY WITH APPLICATION GUIDELINES

In the event of inconsistencies or contradiction between language contained in the Department's Application Guidelines and a Grantee's response, the language contained in the Department's Application Guidelines prevails.

Section 23. NOTICE

All notices required under the provisions of the Contract must be in writing and delivered to the parties' liaisons either by regular mail or personal service.

Section 24. NO ARBITRATION

Unless otherwise agreed to in writing or provided for by law, arbitration is not available to the parties as a method of resolving disputes that would arise under the Contract.

Section 25. REFERENCE TO CONTRACT

The Contract number must appear on all invoices, reports, and correspondence pertaining to the Contract.

Section 26. INTEGRATION

The Contract contains the entire agreement between the parties, and no statements, promises, or inducements of any kind made by either party, or the agents of either party, not contained herein are valid or binding.

Section 27. CONSTRUCTION AND VENUE

This Contract will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning this Contract, venue shall be in the District Court of the First Judicial District in and for the County of Lewis and Clark, State of Montana.

(Substitute the following for contracts with Tribal governments.)

- (a) In the event that a dispute or claim arises under this Contract, the laws of the State of Montana will govern as to the interpretation and performance of this Contract, and any judicial proceeding concerning the terms of this Contract will be brought in the District Court of the First Judicial District of the State of Montana;
- (b) The Grantee's Tribal government waives the Tribes immunity from suit in State court on any issue specifically arising from this Contract; and
- (c) The Grantee's Tribal government waives any right it may have with respect to this Contract to exhaust tribal remedies.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be executed.

_____ (Grantee) Department of Commerce

(Chief Elected Official) Anthony J. Preite, Director

Date: _____ Date: _____